

**IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE**

<b>FILED</b>  March 15, 2000  Cecil Crowson, Jr. Appellate Court Clerk
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WILLIAM C. RENO,	)	NO. E1999-00590-COA-RC-CV
	)	
Plaintiff/Appellant	)	Appeal As Of Right from the
	)	McMINN COUNTY CIRCUIT COURT
v.	)	
	)	
SHANNON A. RENO,	)	HON. LAWRENCE H. PUCKETT
	)	JUDGE
Defendant/Appellee	)	

**For the Appellant:**  
Donald B. Reid  
10 West Madison Avenue  
P. O. Box 628  
Athens, TN 37371-0628

**For the Appellee:**  
Randy G. Rogers  
P. O. Box 507  
Athens, TN 37371-0507

AFFIRMED

SWINEY, J.

**OPINION**

\_\_\_\_\_ This is an appeal by William C. Reno (“Father”) of the Trial Court’s award of custody of the parties’ minor child to Shannon A. Reno (“Mother”) pursuant to a Judgment of Divorce granted to both parties. Father raises the issue of “whether the evidence preponderates against the finding of the Trial Court granting custody of the child to [Mother].” For the reasons herein stated,

we affirm the Judgment of the Trial Court.

### **BACKGROUND**

\_\_\_\_\_ These parties were married on October 10, 1995. They have one child, a daughter, Taryn K. Reno, who was born on November 19, 1996. They separated on March 20, 1998, after two and one-half years of marriage. Father filed a Complaint for divorce on April 1, 1998. On that same day he obtained a Restraining Order against Mother which resulted in Father's having physical custody of Taryn and Mother being restrained from "interfering with Plaintiff's custody of the parties' minor child, pending the hearing of this cause. . . ." Mother's testimony was unrefuted that while Taryn was in Father's temporary custody pursuant to the Restraining Order, she repeatedly asked to see her daughter but was frequently rebuffed by Father, who testified that he changed his phone number "so she wouldn't bother me . . . ."

On June 5, 1998, Mother filed an Answer and Counter-Complaint, a Motion for Temporary Custody of Taryn, a Motion for Alimony and Child Support Pendente Lite and a Notice that a hearing on the Motions had been set for June 22, 1998. After that hearing, the Trial Court filed an Order on August 3, 1998, setting aside the Restraining Order against Mother and holding that "Shannon A. Reno [Mother] should be restored immediately to the care, custody and control of her minor child." The Trial Court set "regular ordinary visitation" for Father and restrained both parties from consuming alcohol or any other intoxicants in the presence of Taryn and from "having custody or visitation rights while they were in the presence of overnight guests of the opposite sex."

The matter came to trial on May 17, 1999. Father testified that he is 23 years old and lives with his grandparents in their four bedroom home in Athens. He and Mother lived in the house next door to his grandparents when they were living together. His mother lives within one mile from

those two houses. He is a high school graduate and has worked for Athens Products for about three months. Before that, he worked for Athens Furniture for about three years. He first realized there were marital problems when Mother started working at Wal-Mart in the summer of 1997. Mother would get off work at 11:30 p.m. or midnight but “wouldn’t make it home ‘til four or five o’clock in the morning.” He testified that during that period of time, he took care of Taryn, cooked for her, put her to bed and did “all those things that would normally be expected of a custodial parent.” Meanwhile, there were times that he would come home early and find Mother asleep and Taryn “tending to itself or crying, making messes.” Mother would take the phone off the hook and sleep, leaving Taryn to care for herself. Mother began talking about another man, Shannon Norwood, but Father never saw her with Norwood while Mother and Father were living together. Father also testified that Mother tested positive for a sexually transmitted disease while the parties were living together, and he later tested negative.

Father testified that if he were awarded custody of Taryn, he would continue to live at his grandparents’ home with Taryn and his grandmother would take care of her during the day while he slept. Father would work the night shift while Taryn slept. It is customary in his family that “we eat at grandmother’s because everybody meets up there and eats.” He opined that, based on the three months that he had Taryn before the Restraining Order was rescinded, he would be able to take care of Taryn if awarded permanent custody. On cross-examination, Father acknowledged Mother’s testimony from the prior hearing, at which she alleged her sexually transmitted disease originated from a three-person sexual encounter which Father insisted she engage in with him and his best friend. He denied excessive alcohol consumption while Mother was working and he was caring for Taryn in the evenings. He denied physically abusing Mother but was impeached by letters

he had written to Mother during their separation in which he apologized for using her as a “beating bag.” In one of those letters, he had also referred to his living arrangement with his grandmother, with his mother living nearby, as being a problem in the marriage. (“I know things would be better if we would get away from this hill. That is where all the hostility comes from is their influence.”) On re-direct, Father introduced a photograph of himself showing a knot or bruise on his forehead which he testified was the result of Mother’s hitting him with her fist.

Mother testified that she is now involved in a romantic relationship with Shannon Norwood, but that at the time of the prior hearing, “we were friends.” She admitted that she and Norwood were involved in a criminal case in which she pled guilty to setting fire to personal property in October 1998. She is now on two years’ probation as a result of that guilty plea. She also admitted that, at the time of trial, she was pregnant, expecting a child July 4, 1999, and that the father of that child is Shannon Norwood. When asked about the presence of Norwood’s truck outside her home during odd hours, she replied that the truck was “torn up . . . ball bearing or ball joint or something . . . and it’s been at my house for quite a while.” She stated that she is on pregnancy leave of absence from her job and is at home 24 hours a day, but that Norwood does not stay at her home. Mother testified that Father had physically abused her during their marriage “too many times to count.” She recounted examples, such as his kicking her because she put mustard instead of mayonnaise on a sandwich. She stated that on a number of occasions she did not go to work because she was embarrassed over black eyes and bruises on her face caused by Father’s beating her. She also testified that Father drank alcohol every day and she begged him to quit drinking. She summarized her view of the marriage: “I left my husband because he was an abusive alcoholic not because there was anybody else involved in our relationship. It had nothing to do with

anybody else.”

Mother said that when Father had physical custody of Taryn, the child’s paternal grandmother and great-grandmother took care of her. When Father had Taryn alone, “I would come home and he would be passed out and the baby would be in the playpen with a dirty diaper.” His mother and grandmother took good care of Taryn and were very good to her. She further testified that Father denied her access to Taryn when he had custody, but that she has never denied Father access to Taryn. She has encouraged and offered additional visitation and will continue that practice.

On cross-examination, Mother admitted having left Taryn with her father one Friday night so Mother could get to know the children of a girlfriend she intended to move in with. Her stepmother, with whom she does not have a good relationship, called Father early the next morning and asked him to come get the child.

Mother’s stepmother testified that she had seen Mother and Norwood together many times. Mother’s stepmother testified that “I followed her at night when she got off of work and she went to his house and picked him up and then they went to her apartment.” She also testified that she had observed Father with Taryn and “he is good with her.”

Father’s grandmother testified that her grandson “does real well with [Taryn].” She likes Mother and still gets along with her, but she would love to have the opportunity to help Father raise Taryn. She stated that she wanted to tell the Court that quite often when Mother and Father were living together next door, Mother would come home from work in the morning and sleep during the day and the baby would “lay there and cry till it couldn’t cry.” She would call Mother, but Mother wouldn’t answer the phone. She would go over to the house, but Mother wouldn’t answer the door and the door would be locked.

Based upon the foregoing testimony and evidence, the Trial Court found that both parties had sustained their grounds for divorce, awarded a divorce to both of them, and divided the marital property. The Court then discussed at length from the bench the various considerations on the issue of custody of Taryn. Among those considerations was the fact that when Father had custody of Taryn, Mother did not get to see the child, but when Mother had custody, Father was allowed and encouraged to see her and additional visitation was offered. The Court found this fact to be “of considerable import.” The Court found that Father’s grandparents were a good influence for the child, but that the Court must determine custody based on:

. . . only two parties . . . the parents . . . . Which of the two of you would the child, the best interests of this child be served by being in custody. Which of the two of you? That’s what I have to focus on . . . it is a very close difficult situation for the Court. Of course, I have seen the witnesses and I have seen the parties. I have observed Mr. Reno and Mrs. Reno. I believe the best interest of the child will be served by her remaining in the custody of the mother, the same schedule of visitation as set out before.

Father appeals, and argues that the evidence preponderates against the Trial Court’s decision granting custody of Taryn to Mother.

### **DISCUSSION**

\_\_\_\_\_ Our review is *de novo* upon the record, accompanied by a presumption of the correctness of the findings of fact of the Trial Court, unless the preponderance of the evidence is otherwise. Rule 13(d), T.R.A.P.; *Davis v. Inman*, 974 S.W.2d 689, 692 (Tenn. 1998). The Trial Court’s findings of fact are conclusive on appeal unless the evidence in the record preponderates against those findings. *State v. Burns*, 6 S.W.3d 453 (Tenn. 1999). A Trial Court’s conclusions of law are subject to a *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949

S.W.2d 293 (Tenn. 1997).

Father argues that the Trial Court failed to make a proper comparative fitness analysis and instead used the “substantial risk” test as opposed to the “best interests” test when the Court awarded custody to Mother. The “best interests” test is set out in T.C.A. § 36-6-106:

**T.C.A. § 36-6-106. Child Custody.** In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, such determination shall be made upon the basis of the best interest of the child. The court shall consider all relevant factors including the following where applicable:

1. The love, affection and emotional ties existing between the parents and child;
2. The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver ;
3. The importance of continuity in the child’s life and the length of time the child has lived in a stable, satisfactory environment; provided, that where there is a finding, under 36-6-106(8), of child abuse, as defined in § § 39-15-401 or 39-15-402, or child sexual abuse, as defined in § 37-1-602, by one (1) parent, and that a non-perpetrating parent has relocated in order to flee the perpetrating parent, that such relocation shall not weigh against an award of custody;
4. The stability of the family unit of the parents;
5. The mental and physical health of the parents;
6. The home, school and community record of the child;
7. The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;
8. Evidence of physical or emotional abuse to the child, to the other parent or to any other person; provided, that where there are allegations that one (1) parent has committed child abuse, [as defined in § § 39-15-401 or 39-15-402], or child sexual abuse, [as defined in § 37-1-602], against a family

member, the court shall consider all evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such abuse has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected thereto. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings;

9. The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child; and
10. Each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child.

The Trail Court's Final Decree in this case contains the following findings of fact on the issue of custody of the parties' minor child:

. . . Mr. Reno's denial of his abuse of his wife is not believed by the Court and is impeached by his statement in letters to the wife. The Court finds that Ms. Reno has been truthful and candid in her testimony, whereas Mr. Reno has not been candid with the Court.

The Court's finding that Mr. Reno abused his wife physically and emotionally in the above manner is a key factor in the Court's award of custody to the wife. While the proof shows that the wife is now a convicted felon and with child by Mr. Norwood, also a convicted felon, her fitness as a parent over Mr. Reno boils down to the Court's conclusion that the custody of their 2-1/2 year old female child should not be placed with Mr. Reno because of the acts he has committed. See T.C.A. § 36-6-106(a).

The Court also finds "continuity" of placement (T.C.A. § 36-6-106(3), and "each parent's" past and potential for future performance of parenting responsibility including the willingness and ability of each to facilitate and encourage a close and continuing parent/child relationship between the child and the other parent, consistent with the best interest of the child, T.C.A. § 36-6-106(10), favors Ms. Reno.

*The Court has considered all of the relevant factors under T.C.A. § 36-6-106, and find that the Court’s award of custody to Ms. Reno is in the child’s best interest and that she is the more fit of the two parents. [Emphasis added.]*

In view of the above-quoted findings of fact by the Trial Court, and particularly considering that Court’s statement that it considered all of the relevant factors under T.C.A. § 36-6-106, Father’s argument that the Trial Court used the “substantial risk” test and not the “best interest” test is unpersuasive. Father apparently bases his argument that the Trial Court used the “substantial risk” test on this statement by the Trial Court from the bench:

But you know what I haven’t heard? And we have been under a circumstance where there is temporary custody for the mother. We haven’t heard really any detrimental effects on this child. Now, I don’t condone this child being around the mother with Mr. Norwood present in the home overnight in his shorts or underwear when the police come and arrest her. That’s a terrible circumstance for any child to have that happen. That’s very disturbing to the Court.

But here’s what the Court focuses on is that there was a time when Mr. Reno had this child and the mother did not get to see the child. There is, it’s undisputed today that since Mrs. Reno has had the child Mr. Reno has had his visitation. That child has been around the grandparents.

We find the Trial Court’s statement that there had been no “detrimental effects on this child,” taken in the context of the Trial Court’s opinion from the bench and Final Decree as a whole, does not support Father’s argument that the Trial Court used the wrong standard in awarding custody of the child to her mother. Plainly, the Trial Court applied the required “best interests of the child” test, balanced the applicable factors set out in that statute, based its decision on the requirements of that statute and made reference to its use of the appropriate standard in its Final Decree. We find no error in the Trial Court’s award of custody to Mother.

**CONCLUSION**

\_\_\_\_\_ For the foregoing reasons, we affirm the judgment of the Trial Court. Costs of this appeal are assessed to William C. Reno, Plaintiff/Appellant.

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D. MICHAEL SWINEY, J.

CONCUR:

\_\_\_\_\_  
HOUSTON M. GODDARD, P.J.

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HERSCHEL P. FRANKS, J.